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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,190	01/23/2004	Peter Fyler Lynch	9495	8071

27752 7590 09/08/2008  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER
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QUINN, COLLEEN M

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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09/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,190	<b>Applicant(s)</b> LYNCH, PETER FYLER	
	<b>Examiner</b> COLLEEN M. QUINN	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-12,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-12, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

The request filed on 6/19/2008 for a Request for Continuing Examination (RCE) under 37 CFR 1.114 is acceptable and an RCE has been established. Any previous finality is hereby withdrawn and a new action on the merits follows. Any newly-submitted claims have been added. An action on the RCE follows.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7-9, 11, 12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece (US 4,023,682) in view of Harris (US 4,143,845). Niece discloses a shelf display apparatus for storing packages (figure 1), said apparatus comprising: a first vertical support member (14) having a first upper end and a first lower end, wherein said first lower end is connectable to a shelf in a first plane (figure 1); a second vertical support member (14) having a second upper end and a second lower end, wherein said second lower end is connectable to a shelf in the first plane (figure 1), wherein said first and second vertical support members are spaced apart from each other on the first plane (figure 1); and a substantially horizontal top support member (12) including a proximate end, a distal end, and a length between the proximate and distal ends, wherein the proximate end is rigidly connected solely to the first upper end, the distal end is rigidly connected solely to the second upper end, such that the first vertical

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support is connected to the second vertical support solely by the top support member (figure 1), said top support member is oriented in a second plane parallel to the first plane (figures 1 & 2), wherein said top support member, said first vertical support member and said second vertical support member together provide structural support for storing packages in a substantially vertical orientation on a shelf (figure 1); wherein the apparatus further comprises first (16, 18) and second (16,18) fastening mechanisms, said first and second fastening mechanisms being joined to said first and second lower ends of said first and second vertical support members respectively (figure 1), each fastening mechanism connectable to a shelf in the first plane (figures 1 & 2), and wherein each fastening mechanism is a U-shaped bracket/ engaging member that is partially insertable through a receiving area of a shelf threshold (figures 1 & 2) capable of providing display of product information. Niece fails to disclose the top horizontal member to comprise a continuously non-linear portion

However, Harris teaches a shelf display apparatus ((figure 7; 66A) for storing articles wherein the apparatus comprises two spaced apart vertical members (70A, 72A) solely connected by a top horizontal member (86) wherein the top horizontal member has a continuously nonlinear portion for substantially the entire length of the top support member (figure 7) and wherein said continuously non-linear portion consists of curves (figure 7), providing an aesthetically pleasing alternatively shaped shelving support intended to support a variety of , and not necessarily flat articles (col. 5, lines 41-43), on display.

Therefore it would have been obvious to one ordinary skill in the art to provide the apparatus of Niece with a non-linear top horizontal member as taught by Harris in order to provide an aesthetically pleasing alternatively shaped shelving support intended to support a variety of articles and that easy to assembly and is economical to construct (col. 1, lines 24-30).

Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece and Harris as applied to claims 1, 4,5, 7-9, 11, 12, 17 and 18 above, and further in view of Heroy (US 3,669,278). Neither Niece nor Harris disclose a fastening mechanism including a plate with a fastener that extends through a shelf in the first plane.

However, Heroy teaches a shelf display apparatus (figure 1) for supporting articles, the apparatus comprising connected and spaced apart vertical members (14) connected to a shelf via fastening mechanisms (figures 1 and 4-6) at the bottom of the spaced apart vertical members, the fastening mechanisms comprising a bottom plate (16) and at least one fastener (24) wherein the bottom plate is connectable to the shelf (figure 1) and the fastener can securely join the plate to the shelf (figure 3), providing an easily deployed fastening means.

Therefore it would have been obvious to one of ordinary skill in the art to provide the apparatus of Niece with a plate and fastener in the first plane as taught by Heroy in order to provide a secure and easily operated fastening mechanism for securing the vertical members to a shelf.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/  
Supervisory Patent Examiner, Art Unit 3634

/C. M. Q./  
Examiner, Art Unit 3634